

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release ("Agreement") is hereby entered into between Northern California River Watch ("River Watch"), Shamrock Materials Inc. and Shamrock Materials of Novato, Inc. ("Shamrock") sometimes collectively referred to herein as "the Parties." The Parties intend this Agreement to fully, finally, and completely settle and resolve certain claims that River Watch has asserted against Shamrock, as more precisely set forth below.

### **RECITALS**

WHEREAS, by letter dated April 28, 2005, River Watch served Shamrock with notice of its intent to file a lawsuit against Shamrock pursuant to § 505 of the Federal Water Pollution Control Act - the Clean Water Act, 33 U.S.C. § 1365(a). That letter shall be referred to herein as "the Notice." The Notice alleged that Shamrock had violated its National Pollution Discharge Elimination System ("NPDES") Permit No. CA000001 ("Permit"), Order 97-03-DWQ, Order 91-13-DWQ (as amended by Water Quality order 92-12-DWQ). In addition, the Notice listed various categories of alleged violations, describing each category and giving a range of dates of the alleged violations for each category. Shamrock denied and continues to deny each and every claim of alleged violation set forth in the Notice; and,

WHEREAS, by letter dated November 1, 2006, River Watch served Shamrock with a supplemental notice of its intent to file a lawsuit against Shamrock pursuant to § 505 of the Federal Water Pollution Control Act - the Clean Water Act, 33 U.S.C. § 1365(a). Shamrock denied and continues to deny each and every claim of alleged violation set forth in the supplemental Notice; and

WHEREAS, on November 2, 2006, River Watch, on behalf of itself, its members and the public at large, filed in the United States District Court for Northern California a Complaint for Injunctive Relief, Civil Penalties, Restitution and Remediation (Environmental – Clean Water Act – 33 U.S.C. §1251 et seq.), action number C 06 6831 PJH (hereinafter, "the Action"). On or about January 4, 2007, River Watch filed a First Amended Complaint for Injunctive Relief, Civil Penalties, Restitution and Remediation (Environmental – Clean Water Act – 33 U.S.C. §1251 et seq.) (hereinafter, "First Amended Complaint"); and

WHEREAS, on January 17, 2007, Shamrock filed an Answer denying the allegations set forth in River Watch's First Amended Complaint; and

WHEREAS, on July 19, 2007 and September 5, 2007, the Parties mediated the claims set forth in the First Amended Complaint before William L. Nagle, Esq.; and

WHEREAS, Shamrock and River Watch wish to compromise and conclude the claims and resolve all differences between themselves; and

WHEREAS, Shamrock and River Watch acknowledge that this Agreement is intended to release all claims asserted by River Watch against Shamrock in the Action;

NOW, THEREFORE, River Watch and Shamrock agree as follows:

1. **Payment:** Within 30 days after it receives an original of this Agreement duly executed by River Watch, Shamrock shall deliver a check in the amount of Fifty Thousand Dollars (\$50,000.00) payable to "Northern California River Watch". Shamrock further agrees to pay for the mediation conducted by William L. Nagle, Esq.
2. **Dismissal:** Within 10 days after it receives an original of this Agreement duly executed by Shamrock, River Watch shall cause the First Amended Complaint to be dismissed with prejudice, each party to bear its own fees and costs.
3. **No admission:** This settlement and said payment is made solely in the interest of compromising and resolving the disputes between the parties as set forth in the First Amended Complaint, and shall not to be construed as an admission that the claims asserted by River Watch in its First Amended Complaint had any merit or validity whatsoever, nor as an admission that the amounts claimed or paid, or any amounts whatsoever, are owed by Shamrock to River Watch.
4. **Release:** River Watch, on its own behalf and on behalf of any members, shareholders, predecessors, successors, assigns, agents, employees, servants, and any person or entity claiming any interest arising out of or related to the allegations set forth in the First Amended Complaint (singly and collectively "Releasor"), hereby remises, releases and forever discharges Shamrock, and any and all of its parents, subsidiaries, shareholders, officers and directors, predecessors, successors, assigns, agents, employees and servants (singly and collectively "Releasee") from any and all claims, rights, demands, and causes of action whatsoever, whether in law or in equity, which Releasor ever had, now has, or hereafter can, shall or may have against Releasee based upon the claims raised in the Action.
5. **Implementation of Tetra Tech Recommendations:** Within 12 months of the full execution of this Agreement, Shamrock agrees to fully implement the recommendations made by Tetra Tech EM Inc. (Tetra Tech) based on its audits conducted between January 18, 2007 and February 1, 2007. Said recommendations are set forth in Exhibit A to this Agreement.
6. **Additional Audits of Non-Permitted Sites:** The Parties agree that Tetra Tech shall conduct an audit of Shamrock's non-permitted sites during or shortly after, i.e. within one week, of the first significant rain event of more than 2 inches to determine if there is any off-site migration of storm water containing pollutants. If there is any off-site migration of storm water containing pollutants, then the off-site discharges shall be tested for turbidity, total suspended solids, conductivity and iron.
7. **Testing and Sampling of Cloverdale Ponds:** There are five (5) earthen ponds at Shamrock's southern Cloverdale site. Four of the five ponds routinely contain both processed water and storm water. The fifth pond located adjacent to the levee road (hereinafter "fifth levee pond") is usually dry and only used by Shamrock to hold and contain water as the four other ponds reach capacity. Within 12 months of the full execution of this Agreement, the five (5) earthen ponds at Shamrock's southern Cloverdale site shall be

sampled for toxic metals, pH, and Total Organic Compounds (TOC). However, River Watch acknowledges and agrees that, depending on the circumstances, there may not be water in the fifth levee pond to sample. If there is no water to test and sample in the fifth levee pond, Shamrock will only be obligated to test and sample the four other ponds.

8. **Production of SWPPPs, Monitoring Data and Annual Reports:** For the next two years, Shamrock shall provide River Watch with all copies of revised SWPPPs, monitoring data and annual reports.

9. **Sharing of Samples:** During the next rain season, whenever Shamrock or its agents intends to conduct sampling, Shamrock shall, whenever reasonably and commercially possible, give River Watch 24 hours notice so that River Watch may obtain split samples for its own independent analysis. Notice shall be given through counsel via e-mail to Lisa Mador, Kimberly Burr and/or Jack Silver or via fax to the Law Offices of Jack Silver. River Watch agrees to provide Shamrock with copies of the written analysis of any samples taken.

10. **Covenant not to Sue and Continuing Jurisdiction of William L. Nagle, Esq.:** River Watch covenants not to sue Shamrock with regard to the issues raised in the Action for a period of 7 years from the date this Agreement is executed. River Watch warrants and represents that it presently is not aware of any other claim or cause of action that could be asserted against Shamrock at this time. All matters affecting the validity and/or interpretation of this Agreement and the rights of the parties hereto shall be governed by the laws of the State of California. The Parties further agree that William L. Nagle, Esq., shall retain jurisdiction and arbitrate any dispute regarding the validity and/or interpretation of this Agreement and the gravamen of this case. Any decision made by Mr. Nagle shall be final, binding, and enforceable in any court of law. In the event Mr. Nagle is unable to carry out his duties as arbitrator, the parties shall agree on a new arbitrator versed in the Clean Water Act. If the parties are unable to agree on an arbitrator, any Court of competent jurisdiction shall appoint an arbitrator. In the event of any action to enforce this Agreement, the arbitrator or Court shall have the discretion to award the prevailing party reasonable attorneys fees and costs.

11. **Confidentiality:** Unless otherwise required by law, the terms of this Agreement and the nature of the lawsuit shall remain confidential. River Watch on its own behalf and on behalf of any members, shareholders, officers, consultants, directors, attorneys, agents, employees, and servants expressly covenants that it shall not disclose or otherwise publish the settlement of this lawsuit including, but not limited to, on any website or print medium. If any inquiry is made about the lawsuit or its settlement, the parties are to respond, "The matter was resolved to the satisfaction of all parties."

12. **Notice:** Except where otherwise provided herein, any notices and requests pursuant to and in furtherance of this Agreement shall be directed to:

For River Watch:

Jack Silver, Esq.  
Kimberly Burr, Esq.  
Law Office of Jack Silver  
P.O. Box 5469  
Santa Rosa, CA 95402  
Phone: (707) 528-8175  
Fax: (707) 707-528-8675.

For Shamrock Materials Inc.:

James E. Sell, Esq.  
Lynch, Gilardi & Grummer  
475 Sansome St., Suite 1800  
San Francisco, CA 94111  
Phone: (415) 397-2800  
Fax: (415) 397-0937

13. **Joint drafting:** This Agreement has been jointly drafted by the parties. It shall not be subject to any rule of construction against any drafter.

14. **Invalidity/illegality:** In case any provision of this Agreement should be held to be contrary to, or invalid under, the law of any country, state, or other jurisdiction, such illegality or invalidity shall not affect in any way other provisions hereof, all of which shall continue, nevertheless, in full force and effect in any country, state, or jurisdiction in which such provision is legal and valid.

15. **Modification or amendment:** Neither this Agreement nor any provision thereof shall be amended or modified or deemed amended or modified, except by an agreement in writing duly subscribed and acknowledged with the same formality as this Agreement. Any waiver by any party of any provision of this Agreement or any right of operation hereunder shall not be controlling, nor shall it prevent or estop such party from thereafter enforcing such provision, right or option, and the failure of any party to insist in any one or more instances upon the strict performance of any of the terms or provisions of this Agreement by the other shall be not construed as a waiver or relinquishment for the future of any term or provisions, but the same shall continue in full force and effect.

16. **Entire understanding:** This Agreement contains the entire understanding of the parties, who hereby acknowledge that there have been and are no representations, warranties, covenants or understandings other than those expressly set forth herein.

17. **Counterparts:** This Agreement may be executed in counterparts, and becomes binding upon the attachment of the last signature of all the parties hereto to one of the counterpart copies.

The Agreement shall comprise the text herein and the combination of each original signature page whether physically assembled together or not.

18. **Facsimile signatures:** Facsimile and/or electronically transmitted signatures may be deemed to constitute originals.

Dated: October \_\_\_\_, 2007.

**Northern California River Watch**

By:

Name:  
(Print or Type)

Dated: October \_\_\_\_, 2007.

**Shamrock Materials, Inc.**

By:

Name:  
(Print or Type)

**Exhibit A to Settlement Agreement and Release**  
**Tetra Tech Recommendations**

**I. Recommendations for Permitted Facilities (Santa Rosa, Novato, San Rafael, Napa, Petaluma (Hooper Street)) :**

- Maintain a complete and current copy of the SWPPPs on site at all permitted facilities.
- Revise maps to include additional site-specific details such as –
  - Material storage and handling locations
  - Locations of structural control BMPs
  - Drainage areas (including direction of flow, points of discharge, and sample locations)
  - Municipal storm drain inlets
  - Vehicle and equipment maintenance areas
- Update discussion of existing BMPs to be site specific and as inclusive as possible, including;
  - Detailed schedule for wattle/filter change outs
  - Maintenance procedures for sumps
  - Maintenance schedule for filtration bins
- Evaluate existing BMPs, identify where and how existing BMPs should be revised to minimize exposure of potential contaminants to storm water, and identify where new BMPs need to be implemented.
- Identify potential sources of pollution and ensure that all sources are addressed for each site, including:
  - All industrial processing, dust and particulate generating activities
  - Areas of soil erosion
- Identify significant materials and for each material listed, including:
  - Storage location
  - Receiving and shipping location
  - Quantity and frequency of delivery
- Describe all non-storm water discharges (NSWDs) (sources, both authorized and unauthorized) and address control measures to ensure compliance.
- Include an up-to-date list of the site-specific pollution prevention team and identify roles and responsibilities.
- Modify monthly inspection forms to clarify inspection protocols and guidelines.
- Consider using SWRCB standard forms.
- Develop new inspection forms for chemical storage areas, BMP maintenance procedures, BMP effectiveness evaluation, etc.
- Include a schedule for training activities in the SWPPP.
- Ensure sign-in logs are maintained for each training session.

- Attach a brief description of storm water management related topics covered during training to training logs.

## **II. Recommendations for Shamrock facilities required to submit Annual Reports:**

- Ensure a complete and current copy of the annual report is located on site at all permitted facilities (5-year record may be retained at corporate office)
- Maintain analysis of all required parameters is performed, including Table D requirements for iron.
- Address benchmark exceedances (to include identifying BMPs and measures taken to control exceedances). Note that benchmark exceedances are not a permit violation, but are considered an indication that BMPs should be reviewed.
- Complete all forms, do not refer to other forms (especially for analytical data).
- Address causes for missing samples (for example, samples for required second storm were typically not collected; if second sample could not be collected, an explanation must be provided).
- SWPPPs should address both authorized and potential unauthorized NSWDS and cite source, cite measures taken to eliminate potential unauthorized NSWDS, and ensure that quarterly monitoring is performed for authorized NSWDS.
- Conduct monthly storm water discharge observations, preferably during the first hour of discharge (consider including readily available precipitation data to demonstrate accuracy of visual observation reporting). Additionally –
  - Observe for all drainage areas and discharge points
  - Document discharge characteristics at each drainage area and discharge point

## **III. General recommendations applicable to all Shamrock facilities:**

- Ensure process water is never discharged improperly at any of the sites, including:
  - Prevent overflow of contained water within ready mix areas such as loading pits and truck wash-down areas.
  - Prevent runoff from truck wash-down areas where water is not contained.
  - Inspect miscellaneous hoses throughout facilities where they are used for activities that could result in runoff (hand washing, spraying down paved surfaces, rinsing off equipment, etc.).
  - Even if water is being treated and the discharge is below benchmark values, it is still considered an unauthorized NSWDS.
- Prevent runoff from activities where potable water is used to fill tanks, or similar activities, from coming into contact with pollutants before leaving the site and minimize erosion through implementing the following practices:
  - Review and update scheduled sweeping to prevent the accumulation of dust, debris, and sediment.
  - Post signs to remind employees of proper practices.

- Train employees to prevent runoff and erosion.
- Ensure a sweeper is employed at the frequencies specified in the SWPPP BMP, and as often as necessary to prevent sediment from being entrained in storm water runoff from the sites.
- Regularly monitor for erosion along berms and facility discharge points.
- Ensure, where feasible, that hazardous materials storage and vehicle/equipment maintenance areas are under cover.
- Generally improve the storage and labeling of hazardous materials.
- Install filter fabric over all drain inlets not currently covered.